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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

2005 OCT 12 P 4: 41
FRONTIER BANK;
DEBRA P. HACKETT, CE;
U.S. DISTRICT COURT
MIDDLE DISTRICT, ALA
v.

R & L TRUCKING COMPANY, INC.,
et als.,

Defendants.

Case No. 3:05 CV 901-F

**DEFENDANT'S MOTION TO COMPEL ARBITRATION OR IN THE
ALTERNATIVE TO MOTION TO DISMISS**

Come now the Defendants, R & L Trucking Company, Inc. (hereinafter referred to as “R&L”), SRM Financial, Inc. (hereinafter referred to as “SRM”) and Stanley R. Melton, IV (hereinafter referred to as “Melton”), by and through their undersigned attorney of record, and specifically reserving the right to challenge this Court’s in persona and subject matter jurisdiction and not submitting to the jurisdiction of this Court and move this Honorable Court to compel Plaintiff to submit all of Plaintiff’s claims, as filed in the above styled cause of action, to arbitration, as agreed to by and between all of the parties to this cause of action, and/or in the alternative, move this Honorable Court to dismiss Plaintiff’s complaint pending arbitration of these proceedings, and as grounds therefore, show unto this Honorable Court as follows:

1. On or about the 21st day of September, 2005, Plaintiff filed its complaint in the above styled case alleging (1) two counts of breach of contract by all Defendants and (2) one count seeking injunctive relief. (See Plaintiff's complaint).

2. On or about the 10th of April, 2002, Plaintiff made a “Commitment Letter” to R&L for a “line of credit facility”, which R&L accepted. SRM and Melton are also party to said “Commitment Letter”. (See Plaintiff’s complaint, Exhibit 3). Said commitment letter included in arbitration agreement. (See Plaintiff’s complaint, Exhibit 3, ¶ 14). All contractual documents signed by and between Plaintiff and Defendants were drafted by Plaintiff. (See Plaintiff’s complaint, Exhibit 3).

4. On or about the 25th day of April, 2002, Plaintiff, R & L, SRM and Melton entered into a “multipurpose note and security agreement” with Loan No. 20018099 in the amount of \$500,000. (See Plaintiff’s complaint, Exhibit 4).

5. On or about the 1st day of May, 2003, Plaintiff, R & L, SRM and Melton entered into an agreement entitled “Mediation and Arbitration Disclosures” for Loan No. 20018099. (See Plaintiff’s “Motion Requesting Court Schedule Immediate Hearing on Injunctive Relief”, Exhibit 1).

6. The arbitration clause contained in the commitment letter dated April 10, 2002, covers “...any controversy, claim, dispute or disagreement arising out of this COMMITMENT LETTER or the LINE OF CREDIT facility will be settled by arbitration...” (See Plaintiff’s complaint, Exhibit 3, ¶ 14).

7. There is no ambiguity in the language of the arbitration provision as contained in the commitment letter. All issues raised in the Plaintiff’s complaint filed this cause of action arise out of the “Commitment Letter” or the “Line of Credit”. All of Plaintiff’s claims are due to be submitted to binding arbitration.

8. Plaintiff is a nationally and/or state chartered banking corporation with its principle place of business located in the State of Georgia.

9. R&L is an over-the-road trucking business, which by its very nature, conducts and has substantial business within interstate commerce.

10. Jurisdiction of this Honorable Court is based on a complete diversity of citizenship.


11. There is no question that the matters and things involved in the Plaintiff's complaint substantially involve interstate commerce.

12. As further support for Defendants' Motion to Compel Arbitration and/or the Alternative Motion to Dismiss, Defendants' adopt each and every allegation and averment contained within Defendant's "Brief in Support of Defendants' Objection to Plaintiff's Request for Injunctive Relief" previously filed with this Honorable Court on the 6th day of October, 2005..

WHEREFORE, the Defendants, R&L, SRM and Melton, move this Honorable Court for an order compelling Plaintiff to submit all claims as advanced in Plaintiff's complaint to binding arbitration, as agreed by and between the parties, or in the alternative moves this Honorable Court to dismiss the Plaintiff's complaint.

Respectfully submitted this the 12th day of October, 2005.


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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon the following individuals, by hand delivering a copy or by placing it in the United State mail, postage prepaid, at their correct addresses this the 12th day of October, 2005.

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